

PAUL MARSHALL ET AL.

IBLA 83-789

Decided August 31, 1984

Appeal from decision of the Socorro Resource Area, New Mexico, Bureau of Land Management, rejecting color-of-title application NM 52228 in part.

Appeal dismissed in part; decision affirmed as modified.

1. Color or Claim of Title: Generally -- Color or Claim of Title:
Applications

An applicant under the Color of Title Act has the burden of proof to establish to the Secretary of the Interior's satisfaction that the statutory conditions for purchase under the Act have been met. The applicant must establish that each of the requirements for a class 1 claim has been met. A failure to carry the burden of proof with respect to any one of the elements is fatal to the application.

2. Color or Claim of Title: Generally -- Color or Claim of Title:
Applications

A class 1 color-of-title claim must be based upon a document which appears to convey the claimed land to claimants or their predecessors. In the absence of any documentary evidence of claim of title, a color-of-title application is properly rejected by the Bureau of Land Management.

3. Color or Claim of Title: Generally -- Color or Claim of Title: Privity

Acquiring title to Federal lands by tax deed from a local authority that mistakenly believes it has title to the lands initiates a new title for the purposes of determining when possession under color of title commenced. Thus, a tax deed is sufficient to support a claim of title if held by claimants or their predecessors at the beginning of the 20-year period for class 1 claims.

APPEARANCES: Paul Marshall, pro se, and on behalf of Josie Marshall Ferfera; Marita Marshall, pro se; John H. Harrington, Esq., Office of the Field Solicitor, Department of the Interior, for Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Paul Marshall, Marita Marshall, and Josie Marshall Ferfera have appealed the June 14, 1983, decision of the Acting Area Manager of the Socorro Resource Area, Bureau of Land Management (BLM), rejecting the color-of-title application of Paul and Marita Marshall, NM 52228, in part. Specifically, BLM rejected the application as to lots 44, 45, and 46 of sec. 31, T. 3 S., R. 1 E., New Mexico Principal Meridian, because the applicants had not furnished any deeds to prove ownership of these lands.

Paul and Marita Marshall submitted a class 1 color-of-title application on May 12, 1981, pursuant to the Color of Title Act, 43 U.S.C. § 1068 (1982), for lots 29, 30, 31, 44, 45, 46, and 49, sec. 13, T. 3 S., R. 1 E., New Mexico Principal Meridian. 1/ The application indicates that they learned that the land was unpatented public land in 1981. By separate decision, also dated June 14, 1983, BLM conditionally approved the application as to lots 29, 30, 31, and 49, and they are not at issue in this appeal. The Color-of-Title Land Report, dated February 3, 1983, approved by the Acting Area Manager on June 10, 1983, discloses that lot 46 is claimed by another applicant, David Gonzales, who is described as the "rightful claimant." In their notice of appeal, appellants disclaim any interest in lot 46. Thus, only lots 44 and 45 are at issue in this appeal.

Review of file NM 52228 reveals that Josie Marshall Ferfera, former spouse of Paul Marshall, was not a party to Paul and Marita Marshall's May 1981 application and was not named in the BLM decision. The notice of appeal was signed on her behalf by Paul Marshall as her attorney-in-fact. Absent any demonstration of interest in the application, we find that she is not a party to this case adversely affected by BLM's decision and, therefore, the appeal must be dismissed as to her pursuant to 43 CFR 4.410. 2/

1/ Two separate grounds for a color-of-title application have been established by the Color of Title Act, 43 U.S.C. § 1068 (1982). Applications filed under the Act are classified by regulation, 43 CFR 2540.0-5(b), as either a class 1 claim or class 2 claim depending upon which provision of the statute they are filed under. Claims based upon good faith, peaceful, adverse possession for more than 20 years under claim or color of title coupled with installation of valuable improvements or cultivation are class 1 claims. Claims founded upon good faith, peaceful, adverse possession under claim or color of title for the period commencing not later than Jan. 1, 1901, to the date the application is filed, during which period claimant and/or his predecessors in title have paid all taxes levied on the land by state and local governmental units, are class 2 claims.

2/ Along with file NM 52228, BLM transmitted to the Board in connection with this appeal file NM 54583 which contains a class 1 color-of-title application for lot 45 filed by Paul Marshall and Josephine Marshall Ferfera on Feb. 10, 1983. Included in file NM 54583 is a photocopy of a power of attorney appointment signed by Josephine Marshall Ferfera on Aug. 27, 1980,

In support of their appeal, appellants have submitted various documents (Exhs. A-F) and assert that they and their predecessors in title have been in sole possession of lots 44 and 45 (which they also describe as tract 15, Middle Rio Grande Conservancy District (MRGCD) map 166), "since time immemorial grazing cattle thereon, keeping the fences up and paying all taxes." See Exh. F. They assert that there are no other claimants adverse to them. They contend that, under the laws of the State of New Mexico, a tax deed (Exh. D) divests all prior claimants of any interest in the property and vests all interest in the State, subject to the superior claims of the United States. They add, thus, that when the MRGCD, a corporation, bought the land, it became the vested owner with the right to convey the property to appellants (Exhs. A, C). Appellants have also submitted an abstract of title to the property. They conclude that their application should be approved as to lots 44 and 45 or they should be given an option to purchase them.

The documents submitted by appellants show their chain of title through two sources. They have submitted copies of two quitclaim deeds dated November 14, 1962, executed by Carlota Gonzales and Frank Gonzales, the widow and son of Andres Gonzales, conveying tract 15, MRGCD map 166, among others, to Paul Marshall and Josephine F. Marshall. They have also submitted a quitclaim deed dated August 20, 1963, showing that Paul Marshall and Josie F. Marshall acquired the tract from the MRGCD. Other documentation shows that the MRGCD acquired the land from the State Tax Commissioner by deed dated July 10, 1963, and the State acquired it from the Socorro County Treasurer by tax deed dated May 18, 1942. The land had been previously assessed to Andres Gonzales. See generally Exhs. A-F to Notice of Appeal; Abstract of Title.

In response BLM asserts that its stated reason for rejecting lots 44 and 45, the lack of deeds proving ownership, is in part erroneous in view of the deeds submitted by appellants on appeal. BLM contends, however, that the application may not be approved as to lots 44 and 45 because the applicants have not demonstrated that they have held the lands in good faith and in peaceful, adverse possession under claim or color of title for more than 20 years as required by 43 U.S.C. § 1068 (1982). BLM points out that its land report shows that lot 44 is not included in tract 15, MRGCD map 166, but in the "unlotted MRGCD tract," and since appellant's color-of-title instruments refer to tract 15, MRGCD map 166, among other specific tracts, appellants have not demonstrated that they hold lot 44.

As to lot 45, BLM argues first that Paul Marshall's own possession of the land will not satisfy the 20-year requirement because appellants claim to have become aware that the land was unpatented public land in 1981 and the earliest he could be said to have acquired the land is 1962. BLM further contends that the requirement cannot be met by tacking his predecessor's interest because appellants have furnished no deed showing that the Gonzales held the land under good faith color of title and because the State of New Mexico, record title owner from 1942, did not adversely possess the land.

fn. 2 (continued)

to "become effective upon my physical illness or disability," among other incapacitating circumstances. The BLM decision on appeal does not deal with application NM 54583, and it does not appear that BLM has taken any adverse action with respect to that application.

[1, 2] Applicants under the Color of Title Act have the burden of proof to establish to the Secretary of the Interior's satisfaction that the statutory conditions for purchase under the Act have been met. Hal H. Memmott, 77 IBLA 399 (1983); Jeanne Pierresteguy, 23 IBLA 358, 83 I.D. 23 (1976); Homer Wheeler Mannix, 63 I.D. 249, 251 (1956). In order to support a class 1 claim, applicants must show that the public land in question has been held in good faith and in peaceful adverse possession by applicants, their ancestors, or grantors under claim of title for more than 20 years. Carmen M. Warren, 69 IBLA 347 (1982). They must establish that each of the requirements for a class 1 claim has been met; the failure to carry the burden of proof with respect to any one of the elements is fatal to the application. See Lester and Betty Stephens, 58 IBLA 14 (1981).

In order for appellants to establish color of title to the lands at issue for the required 20 years, they must show good faith and peaceful adverse possession under claim of title by the owners of the land in 1961, 20 years prior to the time when they received notice that the land was owned by the Federal Government, as well as their own good faith and peaceful adverse possession. The claim or color of title must first be based upon a document that on its face purports to convey the claimed land to appellants and their predecessors. Carmen M. Warren, *supra*; Mable M. Farlow, 30 IBLA 320, 84 I.D. 276 (1977).

BLM is correct that appellants cannot establish their color of title to the land based on a chain of title beginning with the Gonzales because they have submitted no document which purports to convey the land to the Gonzales. Moreover, the good faith of the Gonzales' claim to title must be questioned in any case in view of the tax sale and subsequent deeding of the land to the State.

[3] Thus, appellants' color-of-title claim rests on whether the State's and MRGCD's periods of possession meet the requirements of the Color of Title Act. We have held that acquiring title by tax deed initiates a new title for purposes of determining when claim or color of title commenced. Estate of John C. Brinton, 71 IBLA 160 (1983). Thus, a tax deed will defeat a class 2 color-of-title claim because the holder of the tax deed has no privity with the previous owner. See Hal H. Memmott, *supra*; Estate of John C. Brinton, *supra*. A tax deed may also interrupt the statutory 20-year period for class 1 claims. See Russell A. Beaver, 71 I.D. 114 (1964). In the case before us, however, where the period for a class 1 claim begins with the holder of a tax deed, such deed is sufficient color of title to support the claim. *Id.*

Based on our review of maps attached to BLM's Land Report, we conclude that BLM's assertion that lot 44 is not part of tract 15, MRGCD map 166 is correct. See Land Report, Items 1 and 3. Therefore, appellants have not provided any deeds to support their claim to lot 44, and we affirm the BLM decision as to lot 44.

We note that the Land Report does state that lot 44 "is too small * * * to be managed effectively by BLM and should be disposed of to the applicants" and recommends direct sale of lot 44 to appellants. See Land Report, parts

VI, VII. In view of our decision, BLM may wish to consider direct sale of both lots 44 and 45. 3/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as to lot 44, affirmed as modified as to lot 45, and the appeal dismissed in part.

Wm. Philip Horton
Chief Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge

3/ As to lot 45, application NM 54583 would have to be disposed of first, however.

